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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,877	09/19/2001	Said I.A. Shalaby	AP32738; 066876.0103	9851

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EXAMINER

PATTEN, PATRICIA A

ART UNIT PAPER NUMBER

1654

DATE MAILED: 11/05/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/955,877

Applicant(s)

Shalaby et al.

Examiner

Patricia Patten

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit:

DETAILED ACTION

Claims 1-33 are pending in the application.

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-2, drawn to a composition comprising an extract from *S.aegyptiaca* and an additional extract such as *N.sativa* extract, classified in class 424, subclass 725 for example.
- II. Claims 1, 3, 4 and 5, drawn to a composition comprising an extract from *S.aegyptica*, an additional extract such as *N.sativa* extract as well as other plant extracts such as *R. Officinale* extract and *C. Cyminum* extract, classified in class 424, subclass 773 for example .
- III. Claims 1 and 6, drawn to a composition comprising an extract from *S.aegyptiaca*, an extract such as fruit of *E.elaterium* in a carrier, classified in class 424 , subclass 779 for example.

Art Unit:

- IV. Claims 1 and 7-9, drawn to a composition comprising an extract from *S.aegyptiaca*, an extract such as *C.proximus* as well as other plant extract such as *I.helenium* root extract, classified in class 541, subclass 783 for example.
- V. Claims 1 and 10-12, drawn to a composition comprising an extract from *S.aegyptiaca*, an extract such as *H.indicus* rhizome as well as other plant extracts such as *C.intybus* shoot extract, classified in class, 512 subclass 5 for example .
- VI. Claims 1 and 13-15, drawn to a composition comprising an extract from *S.aegyptiaca*, an extract such as *H.indicus* as well as other plant extracts such as *F.vulgare* seed extract, classified in class 424, subclass 776 for example.
- VII. Claims 1 and 16-18, drawn to a composition comprising an extract from *S.aegyptica*, an extract such as *C.proximus* as well as other plant extracts such as *C.cardunculus* flower or leaf extract, classified in class 426, subclass 49 for example .
- VIII. Claims 1 and 33, drawn to a composition comprising an extract from *S.aegyptica*, an extract such as *H.indicus* rhizome extract wherein the composition does not contain *E.elaterium* and includes two unrecited herbal extracts , classified in class 424, subclass 777 for example.
- VIII. Claims 19-23, drawn to a method for treating a viral infection with a composition comprising a composition comprising an extract of *S.aegyptiaca* and an extract such as *N.sativa*, classified in class 424, subclass 770 for example .

Art Unit:

- X. Claims 19 and 24-25, drawn to a method for treating a viral infection with a composition comprising a composition comprising an extract of *S.aegyptiaca* and an extract such as *H.indicus* wherein the composition does not contain *E.elaterium* and includes two unrecited herbal extracts, and further wherein the composition comprises *E.elaterium* classified in class 426, subclass 589 for example.
- XI. Claims 19 and 26, drawn to a method for treating a viral infection comprising administration of a composition comprising an extract from *S.aegyptiaca*, an extract such as *C.intybus* and an extract such as *I.helenium* root classified in class 424 , subclass 777 for example.
- XII. Claims 19 and 27-30, drawn to a method for treating a viral infection comprising administration of an extract such as *S.aegyptiaca*, an extract such as *H.indicus* rhizome extract and other extracts such as *N.sativa* seed extract and *C.proximus* extract, classified in class 424, subclass 725 for example .

The inventions are distinct, each from the other because of the following reasons:

Inventions I & VIII, X & VIII, IV & XI, and XII & VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another

Art Unit:

materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the method could be carried out using different products since the compositions could be different: i.e.; the composition claims recite markush groups, wherein different plant extracts may be selected to incorporate into the final composition. Addition of different plant extracts would necessarily produce different effects when administered to an individual. Thus, the claims are evidence that the methods could be carried out with materially different products.

Inventions I- VIII are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combinations as claimed do not require the particulars of the subcombinations as claimed because the combinations could employ different extracts. For example, the combination of Group II does not require the particulars of the subcombination of Group I because Group II could be a composition comprising *I.helenium* root extract, *E. elaterium* extract and *S.aegyptiaca*. The combination does not require the particulars of the subcombination, in this case, any other plant extracts as recited in claim 1, to be present in the composition. Each of the subcombinations, because they may employ different plant extracts in the mixture, would all provide for different, respective pharmaceutical activities when administered to a patient.

Art Unit:

Therefore, the methods of Groups I and II are independent since they are not disclosed as capable of use together, they have different modes of operation, they have different functions, and/or they have different effects. One would not have to practice the various methods at the same time to practice just one method alone. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group.

Because these inventions are distinct for the reasons given above and the search required for each Group is not required for the others, restriction for examination purposes as indicated is proper. Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even though the requirement be traversed.

A telephone call was not made in order to facilitate a telephonic election because of the complexity of the restriction.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Art Unit:

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

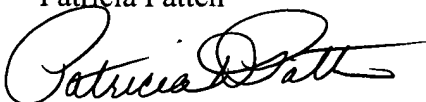
Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

30 October 2002

Patricia Patten

A handwritten signature in cursive script, appearing to read "Patricia Patten", written in black ink.